

## **REMARKS**

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

### **I. CLAIM STATUS AND AMENDMENT**

Claims 1-9 were pending in this application when last examined.

Claims 1-5 and 9 were withdrawn as non-elected subject matter.

Claims 6-8 were examined on the merits and stand rejected.

Claim 7 is cancelled herein without prejudice or disclaimer thereto.

Claim 6 is amended herein to clarify the claimed invention, while claim 10 is added.

Support for these amendments may be found in the claims as originally filed and in the specification, e.g., on page 6, lines 20 to 24, and in the working examples.

No new matter has been added.

### **II. IDS**

Applicants respectfully note that the Examiner has yet to indicate whether the WO 00/49875 reference designated AG in the IDS of August 25, 2006, has been considered. With the last response, Applicants sent another copy of the reference, along with a copy of the IDS of August 25, 2006.

Applicants note that the Examiner has attached a crossed-out copy of the IDS of August 25, 2006, which is referred to on page 1 of the Office Action by the date of May 25, 2010, which was the date Applicants re-submitted the IDS in question and a copy of said reference.

Applicants respectfully request that the Examiner indicate whether this reference has been considered.

### **III. ENABLEMENT REJECTION**

On page 2 of the Office Action, claims 6-8 are rejected under 35 USC 112, first paragraph, for lack of enablement. The Examiner indicates that the claimed bacteria strain appears to be novel and not available to the public, and, further, that it cannot be reproducibly isolated without undue experimentation.

Applicants respectfully traverse this rejection in light of the Declaration of Deposit Availability submitted herewith. The Declaration clarifies the points raised by the Examiner along the lines suggested.

For this reason, Applicants respectfully submit that a person of ordinary skill in the art would be able to make and use the claimed invention without undue experimentation.

Therefore, Applicants respectfully submit that the rejection is untenable and should be withdrawn.

#### IV. INDEFINITENESS REJECTION

In the paragraph spanning pages 3 and 4, claims 6-8 are rejected under 35 USC 112, second paragraph, as indefinite.

Applicants respectfully traverse this rejection as applied to the amended claims.

Applicants note that claim 6 is amended herein as follows:

A method for controlling plant diseases comprising ~~application of a control agent or material for plant diseases comprising~~ applying an effective amount of a bacterium of the genus *Bacillus*, which is the DAIJU-SIID2550 strain ~~(accession number: FERM BP-10114)~~ (accession number: FERM BP-10114), to a host plant of plant pathogenic bacteria, fungi, or ~~viruses~~ viruses, wherein the plant belongs to *Brassicaceae*, *Solanaceae*, *Cucurbitaceae*, *Liliaceae*, *Leguminosae*, *Asteraceae*, *Chenopodiaceae*, *Gramineae*, *Rosaceae*, *Caryophyllaceae*, *Primulaceae*, *Rutaceae*, *Vitaceae*, *Actinidiaceae*, *Ebenaceae*, *Umbelliferae*, *Convolvulaceae*, or *Araceae*.

Applicants respectfully submit that the claim terms have a clear meaning based upon the teaching of the specification and the knowledge in the art, as the genus is identified and the recitation of “an effective amount” is included.

Therefore, Applicants respectfully submit that the ground of rejection is untenable as applied to the amended claims and should be withdrawn. Support for these amendments maybe found in the claims as originally filed and in the specification, e.g., on page 3, lines 1-7.

## V. NOVELTY REJECTION

On pages 4-6 of the Office Action, claims 6-8 are rejected under 35 USC 102(b) as anticipated. Applicants respectfully traverse this rejection as applied to the amended claims.

The Examiner emphasizes that claims 6-8 are directed to application of **an undisclosed amount of an agent or material** that contains **an undisclosed amount of the bacteria**, which includes traces, to **any host plant**; and that the application of a **composition containing a strain in an amount that is not clearly and unambiguously significant in its effects** does not patentably distinguish the invention from the art of record that discloses application of compositions comprising *Bacillus* strains that are effective for the recited purpose.

Applicants respectfully submit that this rejection is overcome by the amendments to the claims made herein, in which the amount of the bacteria is limited to "an effective amount" and the host plant has been limited specifically to a plant belonging to *Brassicaceae*, *Solanaceae*, *Cucurbitaceae*, *Liliaceae*, *Leguminosae*, *Asteraceae*, *Chenopodiaceae*, *Gramineae*, *Rosaceae*, *Caryophyllaceae*, *Primulaceae*, *Rutaceae*, *Vitaceae*, *Actinidiaceae*, *Ebenaceae*, *Umbelliferae*, *Convolvulaceae*, or *Araceae*.

Claims 6 and 8 as amended are directed to application of **an effective amount of the bacteria to specified host plants**. The working examples of the present application show that the effect of the present invention is **significant**.

Applicants respectfully submit that the cited references do not disclose each material feature of the claims as amended herein. Therefore, the rejection is untenable and should be withdrawn.

**CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

Daiju YUKI et al.

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